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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

APR 19 2022

THOMAS G. BRUTON
CLERK, U.S. DISTRICT COURT

UNITED STATES OF AMERICA)	
)	No. 21 CR 128
v.)	
)	Judge John F. Kness
KEVIN SMITH)	

Memorandum/Affidavit Regarding the Hearing on December 3, 2021

Now comes Kevin Smith, the defendant, by and through himself, respectfully submits this memorandum/affidavit regarding the hearing which took place on December 3, 2021.

Factual Background

On December 3, 2021, I, Kevin Smith, attended a telephonic status hearing at the request of Judge John F. Kness. Attorney Holly Blaine from the Federal Defender Panel, along with the Assistant United States Attorney, Stephen Henize, were also in attendance at the hearing.

The judge engaged in a brief colloquy in regard to me (Kevin Smith) consenting to proceed by telephone. I, Kevin Smith, gave my consent to proceed via telephone on that day.

The judge stated that he wanted to address the issue of standby counsel. The judge then asked me, Kevin Smith, if I remembered the past discussions regarding Ms. Blaine's role in this case, to which I replied that yes, I did remember. I went on to tell the judge that there were some

things that needed to be cleared up. I told him (the judge) that I never requested Ms. Blaine and that it was the prosecution that said someone should be appointed. I further stated that I never asked for her to be included on emails or anything with me, but that I did understand why she was there. The judge had given me authority to speak and answer the question, but when I finished my answer, he told me to let him say what he was going to say and then he would give me a chance to say what I was going to say. The judge also stated that he was abundantly clear about me not asking for Ms. Blaine's assistance or appearance on my behalf and that I had stated that many times before. He said that she was going to be there, but I did not have to use her services.

The judge then stated that he wanted to talk about an email issue. He stated that he was confused because he was told by the Courtroom Deputy that I send emails to the court routinely using an email address that I claim is private and that I wish to keep private. The judge then asked what the story was regarding me sending emails to the court. I incorrectly stated that the email address that I preferred to use was on the docket. I also said that the court was communicating with me via my personal email address, and they previously had issues communicating with me, so I allowed the court to continue to use it, but as far as anybody else, any other counsel or anybody that I did not authorize to use that email, they should not have it.

The judge went on to ask me about the docket in regard to my email and the filed appearance form. The appearance form has my address on it and a place for a phone number or email. I did not have an email address on the form. The appearance form, though, has nothing to do with standby counsel having my private email information.

I asked the judge - if I didn't put an email address on my appearance form, but the court is communicating with me through email, and I didn't ask for appointed counsel, is it okay for the

court, or is it within the law for the court to copy someone onto my personal emails that I did not authorize to have access to my information?

The judge told me that given the history of me sending emails unsolicited to the court, he thought it was fine. That statement by the judge was/is false and inaccurate. The judge then directed the court and everyone else to stop communicating with me via email. The judge then did not allow me to comment any further regarding that false statement made in court. The judge stated that he wanted to move on, and he was done with the issue because he had limited time. He said that if I wished to file an amended appearance form that I could and said that everything for now was going to be done by first class US mail, including any communications from the court. He said that I would receive docket entries through US mail and that the government was directed not to communicate with me by email. Also, standby counsel was directed not to communicate with me by email and that was the way it was going to be, unless and until I submitted an amended appearance form.

The judge went on to state that he had reviewed the chain of emails concerning the trial date and he desired to set the case for trial. The judge stated that he was going to issue some written rulings on a pending motion, but he was not prepared to rule orally on the day of the hearing that was in progress. Despite not addressing some issues pending in the motion that were vital to my defense, the judge asked me if it was correct that I needed a minimum of 18 months for trial, to which I replied that was correct. The judge had already stated that he reviewed the chain of emails between the prosecution and I regarding the trial, and then asked me to explain why I needed that very long period of time. I replied that I did explain in the email, and it was regarding my children's education. The judge stated that when he asks me to explain something he didn't need a reference back to what I explained before, he wanted me to give him an answer

then. It must be mentioned that the judge, neither in the current hearing I am referring to or any prior hearings, ever informed me of my right to not make any statements.

My children's plans and other issues I had addressed in the email are of a private matter, so I told the judge that I was not prepared to give an answer. Despite the fact that issues pertaining to a minor along with some health issues were clearly spelled out in a private email between the court, the prosecution, and myself, the judge decided to set the trial for September 13, 2022, which was only half of the time that I had requested.

The judge continued on to what he described as another issue that, I, Kevin Smith continually refer to which was Criminal Rule 5(f) and asked the government's counsel about it. Judge Kness stated that Judge Gettleman was the original judge and that he (Judge Gettleman) exercised his right after one or two hearings to transfer the case. Judge Kness stated that he was not present during the first court hearing in this case, where everybody was present. The Judge went on to ask the prosecutor if he recalled if the issue was raised in front of Judge Gettleman to which the prosecutor replied that he was not certain, but to his recollection Judge Gettleman did not address it and didn't believe Judge Gettleman entered anything in writing either.

On May 18, 2021, I, Kevin Smith, appeared before Judge Kness on telephone conference via special appearance. Judge Kness claimed not to know what special appearance meant and he told me to explain it to him. I told the judge I was appearing via special appearance to get complete answers to the discovery items that I requested in a motion filed on April 6, 2021. The judge still claimed that he had no idea what I was talking about even though I explained that I needed complete answers to the discovery items. The motion was over 28 days old, and the prosecution was not in compliance with the court's local rules regarding responses to motions. There was a total of four hearings held before Judge Kness finally addressed the issue of discovery at the in

person hearing held on July 30, 2021, and at that time the prosecution still did not have all of the discovery. The judge finally addressed Criminal Rule 5(f) on December 3, 2021. It must be noted that there is a time sensitive motion that still has not been ruled on that requests some information that is a part of the discovery process and is vital to my defense.

The prosecution motioned to exclude time under the Speedy Trial Act, until the date that has been set for the trial, in light of the fact that I, Kevin Smith, the defendant, needed much more time even than that to prepare for trial, and that there are motions pending and there will be more motions made by the parties that the court will need to consider and rule on. The judge then asked if I consent or object to the Government's motion to exclude time, to which I replied that I didn't want to get into a big argument, but every time I'm going to object. The Judge said that he could not understand my response and asked me to repeat it. I, Kevin Smith, stated, once again, that I didn't want to get into a debate about it (meaning objecting), but stated that every time I was going to object due the situation that happened before this. The judge stated that there was not a debate, and the way court works was that parties make arguments, and he makes rulings. The judge said if I want wanted to make an argument on why I wanted to object I was free to do so and if I didn't it wish to make an argument that was fine as well. My argument was based upon the fact that Criminal Rule 5(f) was just addressed at the hearing on December 3, 2021, about 9 months after it was supposed to be done. The judge interrupted and claimed not to be able to hear me and that my speech was muffled. The judge stated that he would rather have these meetings in person and then allowed me to finish my statement to which I replied that based upon the situations leading up to this date, I perceived there to be the violations of due process in this case, and that's the reason I would not like to exclude time. The judge then rejected my objection to the exclusion of time under the Speedy Trial Act.

I asked the Judge if I could please address the comment that he made regarding me sending unsolicited emails to the Court, to which the judge replied 'No'. The judge stated that the reason he said no was because he claimed to have addressed the issue. He also stated that he didn't wish to keep using court time and that it was a "sideshow". The judge stated the issue was irrelevant and that I understood because he claimed to have explained it several times. He also stated that if I wanted to be able to use email to communicate to the court, in this case, that I was going to have to file an amended appearance form. After telling me that I could not address the issues, the judge asked if there was anything further and I told him I would address it in a memorandum.

Discussion

1. Appointment of standby counsel and unsolicited emails

As it was mentioned in the factual background of this memorandum, Judge Kness stated his desire to address the issue of standby counsel. I felt it was important to mention that I personally did not request the assistance of standby counsel. It is apparent that standby counsel was appointed at the request of the prosecution at the in person hearing on July 30, 2021. The appointment of Ms. Blaine including the process of how and why she was appointed is an important issue that needs to be accurately reflected on the record. I also feel it is necessary to mention that once again my private email address appears to have been disclosed to Ms. Blaine, the standby counsel for this case.

I gave my email address to Kathryn Chapman of Pretrial Services back in the beginning of March 2021. I had to provide to her my address and phone number as well for the use of

communicating in regard to this case. It was Enjoli Fletcher that emailed Ms. Chapman on May 18, 2021, in trying to contact me, Kevin Smith, even though I had provided my information to the court almost two months prior.

I do not have an issue with the court or government communicating with me via email. It is a more efficient and reliable manner of communication than the US postal service. I do, however, have an issue with my personal private information being given to any other individuals without my consent/authorization, which I have stated before in this case. To do so is a violation of the Privacy Act. That is the reason that I have brought up to the court and the prosecution that emails coming to me should not have someone copied in on them that I have not given my email address to.

When this was brought up in court on December 3, 2021, to the Judge, he said that given the history of me sending unsolicited emails to the court, he thought it was fine to do so. The statement made by the judge alleging that I send unsolicited emails to the court is blatantly false. Attached to this document as Exhibit A is the copy of the email that was sent by Enjoli Fletcher, the Courtroom Deputy, to Kathryn Chapman of Pretrial Services. It is important to note that the case was transferred on April 27, 2021, from Judge Gettleman to Judge Kness. The first status hearing with Judge Kness was scheduled for May 18th 2021, at 11:15am. There were fourteen (14) weekdays from the date the case was transferred until the actual hearing date of May 18, 2021. On the morning of the hearing scheduled for May 18, 2021, at 8:42 AM, I, Kevin Smith, was notified of a time change. If the court was not able to send an email to a person authorized to have details regarding the case and my personal information, I could have possibly missed this court date. Also included in Exhibit A, I have attached two other examples of the types of emails in which the Court or the prosecution and I are engaged in consensual court directed

communication. I have never sent any unsolicited emails to the court. Any emails that I have sent were regarding certificate of service, outstanding motions, or proposed conference scheduling.

Attached to this document as Exhibit B are examples of unsolicited emails. They are actual emails sent to my private email addresses by attorney Joshua Adams to whom I have never given authorization/consent for anyone to give to him nor have I ever given my information to him. It should be noted that my phone number was also given to Mr. Adams again without my authorization/consent. It should be noted that my phone number could have only been disclosed to by one of three parties that are involved in this case. Also, attached as a part of Exhibit B, is an email from Attorney Holly Blaine.

It is apparent that because I (have and) am bringing up violations of the Privacy Act due to my personal information being given out without my consent/authorization, the judge has decided to deny my ability to communicate with the court and government via email. This is wrong and must be clearly noted for the record.

2. Speedy Trial Act

The record should clearly reflect that I have objected to time being excluded under the Speedy Trail Act and will continue to do so. As stated in the factual background, I stated the reasons for my objections, and I am sure my responses should be accurately recorded in the transcripts. The Government failed to issue a summons and/or arrest warrant, yet it was stated in court that I was in custody and was arraigned under false pretenses. These are violations of the Due Process clause of the fourteenth (14) amendment. Also, I was clearly on the record stating that I wished to proceed pro se before the first hearing with Judge Kness which took place on May 18th, 2021.

The judge decided to try and place me under oath, in which he initially stated on several occasions that if I wanted to represent myself in court, then I had to be placed under oath before he conducted the Faretta colloquy. The judge appeared to have violated my sixth (6) amendment rights by appointing Joshua Adams as my attorney without notification of cause. The judge has tried to portray my objection to the exclusion of time under the Speedy Trial Act in a manner that is not consistent with what I have stated on the record. If the case had been administered properly and the prosecution would have followed the guidelines set forth by the Federal Rules of Criminal Procedure, then there should have not been an issue with progressing forward. This has not been the case and therefore all of the violations of the rules and laws should be examined before this case moves forward.

3. Examination of the nature of the Unsolicited emails

Something that seemed very strange happened on June 7, 2021. I received a message from Joshua Adams on my personal email address stating that he left me a voice message. Joshua Adams appeared at a status hearing held on May 26, 2021. There was no appearance form filed on the docket at the time of or prior to the aforementioned status hearing. When I logged onto the video hearing that day, Joshua Adams was online exchanging pleasantries with prosecutor. He introduced himself to me and offered me his phone number and email address. I never gave any of my personal information to Mr. Adams. I had no idea why he was there prior to him offering his contact information until the judge explained why he was there. I exercised my constitutional first (1) amendment rights to ask the judge questions about the process he was attempting to take me through.

The judge offered me an opportunity to speak with Mr. Adams on a private line to which I declined. There was no indication whatsoever that I consented to any communications between Mr. Adams and myself at any time.

The unsolicited email that was sent to me, Kevin Smith, on June 7, 2021, by Mr. Adams stated that "It appeared as if you had some questions and I wanted to see if I could answer them prior to the hearing."

After not receiving a response to the email he sent on June 7, 2021, Mr. Adams followed up with another email to a different private email address of mine stating "I called you a couple days ago, please give me a call prior to the hearing at 1115 today".

After not receiving a reply from me to either email or accepting his offers to have a "breakout" session in court, amazingly Mr. Adams sent another email to me stating "Please call me prior to the next court date so we can discuss your case. I can answer the questions you have and have been asking the court".

In my opinion, there was no way that Mr. Adams could possibly correctly answer any questions that I had been asking the court. How could he possibly know how the judge would respond? Also, the judge had stated that he wanted counsel there in case I decided that if I wanted a lawyer that I would have one there.

It appears as though my suspicions about Mr. Adams were correct. He appeared at the hearing seemingly prepared with caselaw that would support the judge's opinion that he could require me to be placed under oath to conduct the Faretta colloquy. The prosecution appeared to be more cautious than Mr. Adams was in professing their uncertainty about the legality of the requiring me to be placed under oath.

The judge appeared to try and place me under oath by threats, intimidation, and by what appeared to be deceptive methods. After I asserted to the judge that I had constitutional rights to ask questions and would file a complaint in regard to the treatment I was being subjected to, the judge then asked Mr. Adams if he thought that he needed to persist in getting me to swear an oath to tell the truth that day. Mr. Adams told the judge that he thought in order for me to proceed Pro Se that I needed to swear an oath.

Without stating a clear reason on the record, the judge then ordered the prosecution to submit a concise memorandum regarding being placed under oath for the Faretta colloquy. The judge somehow decided that Joshua Adams was my attorney and ordered him to submit a memorandum on the same topic also. Having appointed Joshua Adams as my counsel appears to be a blatant violation of my sixth (6) amendment rights. In the prosecution's memorandum they conceded that there was no specific caselaw that they could find that could support the notion that the judge could force me to take an oath before or during the Faretta colloquy.

Joshua Adams sent another email on June 24, 2021, which said 'Mr. Smith, Can you please acknowledge receipt of these emails, I want to know I at least have your correct address? If you do not want to discuss your case with me that is fine, but I would appreciate the courtesy of a reply. I have to file my brief regarding the court's requirement to place you under oath. Do you want a copy of the government's brief? Again, please respond to this email either way. If you don't that is fine, if you do, I am happy to speak with you.'

At the June 30, 2021, hearing, the judge stated that he would have committed an error of law if he would have denied my right to proceed pro se solely on the basis of the fact that I wouldn't be sworn. Again, to reiterate, Judge Kness stated that it would have presented too much of a risk of error to deny my request to proceed pro se solely on the basis that I wouldn't be placed under

oath and refused to be placed under oath. At this same hearing, I, Kevin Smith, asked the judge, respectfully and humbly, to state for the record when was Mr. Adams appointed as my counsel and for what reason, to which he (the judge) replied that he was not going to get into that at that moment and told me he was my lawyer at that time.

The judge scheduled an in-person hearing during a global pandemic when a general order by the NDIL was in effect that limited many of the in-person procedures, even though he (the judge) had stated all throughout the other hearings that we would be able to proceed via video or telephonically until the NDIL order was amended or lifted. I had never been to the courthouse, so I asked the judge if the address and information I needed for the in-person hearing would be included in the email from the Courtroom Deputy when Joshua Adams interrupted (which was allowed by the judge) and stated that he would tell me if I would contact him (Joshua Adams) by responding to an email that he sent to me. I then asked Mr. Adams how he got my contact information but was yelled at by the judge and commanded to 'STOP TALKING!' By trying to get me to respond to the emails that he sent, Joshua Adams appeared to try to gain implied consent to contact me. It appears that he understood that he received my information through unethical or illegal means.

On July 22, 2021, Joshua Adams sent another email stating 'Are you receiving my emails? Please kindly let me know. If you wish not to discuss the case that is fine, I would like to know if you are at least receiving them. Thanks Joshua Adams.' This email appeared to be another attempt by Mr. Adams to obtain consent to send emails to me. I never responded to any of the emails because they were unsolicited and appeared have been sent under deceptive conditions for nefarious purposes.

This is a very prejudicial case that is being administered under extremely bias conditions. The extreme stress, pain, and suffering of dealing with the weight of the Federal Government unrestrained and not being bound to the rules that state they must follow is hard enough to deal with, then to add unsolicited emails from an attorney that would stand to gain financially from representing me by having the case go to trial and ignoring my constitutional rights is almost unbearable. Under any other logical circumstance, the nature of process would be considered an obvious conflict of interest.

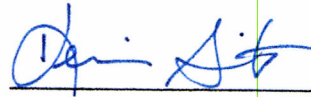
Conclusion

The judge appears to have penalized me by having revoked my privilege to use email to communicate with the court and government because employees of the court and the government have violated the NDIL Local Criminal Rule: LCR 57.2 Release of Information by Courthouse Personnel which states that all courtroom and courthouse personnel, including, but not limited to, deputy marshals, court security officers, minute clerks, court reporters, pretrial services officers, probation officers, and clerical personnel of the offices of the United States marshal, the clerk of court, the probation department, and pretrial services, shall not disclose to any person, without authorization by the court, information relating to a pending criminal case that is not part of the public record. All such personnel shall not divulge any information concerning arguments and hearings held in chambers or otherwise outside the presence of the public.

It would appear that in this situation the logical fair and legal action to take would be to simply order the government and the court room employees to follow the established rules and not share my email address, phone number, or personal information with anyone that I didn't consent to communicate with.

In closing all of my objections to the release of my personal information and exclusions of time in regard to the Speedy Trial Act are all on record in various motions and memoranda that I have filed. The latest actions taken by the court in this case are consistent with the apparent disregard to the established laws, rules, and regulations that govern the Federal Court.

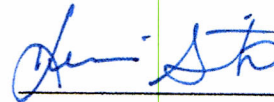
Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Kevin Smith", is written over a horizontal line.

Kevin Smith, Pro Se Defendant
1440 W. Taylor, #1390
Chicago, IL 60607

ATTESTATION

I declare that to the best of my knowledge under penalty of perjury that the foregoing is true and correct.

A handwritten signature in blue ink, appearing to read "Kevin Smith", is written over a horizontal line.

Kevin Smith, Pro Se Defendant

CERTIFICATE OF SERVICE

I hereby certify that a copy of this document was sent via email on April 13, 2022 to the Northern District of IL electronic filing system at Temporary_E-Filing@ilnd.uscourts.gov

I hereby certify that a copy of this document was sent via first class US postal service on April 13, 2022 to Judge John F. Kness in care of Enjoli Fletcher to the Everett McKinley Dirksen US Courthouse at 219 S. Dearborn St., Attn: Enjoli Fletcher Rm. 1732, Chicago, IL 60604.

I hereby certify that a copy of this document was sent via first class US postal service on April 13, 2022 to Stephen Heinze to the United States Attorney's Office, NDIL-Chicago, Attn: Stephen L. Heinze, 219 S. Dearborn St., Chicago, IL 60604.

EXHIBIT A

From: Enjoli Fletcher
Sent: Tuesday, May 18, 2021 8:42 AM
To: Kathryn Chapman <Kathryn[REDACTED]@courts.gov>
Subject: Telephone Hearing with Judge Kness 21-cr-128 Smith

Good morning Kathryn – There is a status hearing set before Judge Kness this morning at 10:45 am in case 21-cr-128 USA v. Smith. The case was reassigned to Judge Kness from Judge Gettleman. It is my understanding that Defendant Kevin Smith has requested to proceed pro se. Is there anyway that you can contact Defendant Smith to inform him of the status hearing with Judge Kness? **The hearing will be held via phone and he can just dial-in at 10:45 using the following number and code: 888-684-8852, conference code 3796759.** I originally sent the email below to attorney Stephen L. Richards, who is listed on the docket but government counsel informed me that Mr. Richards no longer represents Defendant Smith. Any help/information would be appreciated.

Best,
Enjoli

Enjoli Fletcher
Courtroom Deputy to the Hon. John F. Kness
U.S. District Court for the Northern District of Illinois
219 S. Dearborn Street
Chicago, IL 60604

Kathryn Chapman <Kathryn[REDACTED]@courts.gov>
Tue 5/18/2021 8:50 AM

To:

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Kevin please see the information below, it appears your judge has changed and you have a hearing this morning at 10:45. I've bolded the call-in information. Please let me know you've received this information. Thanks,

Kathryn

Kathryn Chapman, M.A.
U.S. Pretrial Services Officer
Northern District of Illinois
219 South Dearborn Street
Room 15100
Chicago, Illinois 60604
Cell Phone: [REDACTED]
Fax: [REDACTED]

EXHIBIT A

From: k s <smith[REDACTED]mail.com>
Sent: Tuesday, May 18, 2021 9:26 AM
To: Kathryn Chapman <Kathryn[REDACTED]urts.gov>
Subject: Re: Telephone Hearing with Judge Kness 21-cr-128 Smith

CAUTION - EXTERNAL:

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Also, I never have received any mail from the court of any notices. You have all of my correct mailing information. I was told at the last hearing that I would receive notices via mail. All of the information that I submitted to you is correct.

Thank you for informing me.

RE: Pre-Trial Status Hearing 5/26/21 CASE #: 1:21-cr-00128-1 KEVIN SMITH

Enjoli Fletcher <Enjoli[REDACTED]urts.gov>
Wed 5/19/2021 3:52 PM

To:

- k s <smith[REDACTED]mail.com>

Cc:

- Kathryn Chapman <Kathryn[REDACTED]urts.gov>

Good afternoon – An email has been sent to the parties that contains a copy of the minute order dated 5/18/2021, the link for the video hearing, and instructions.

Best,
Enjoli

Enjoli Fletcher
Courtroom Deputy to the Hon. John F. Kness
U.S. District Court for the Northern District of Illinois
219 S. Dearborn Street
Chicago, IL 60604
[REDACTED]

Your opinion is important to us [click HERE to take our customer service survey](#)

EXHIBIT A

From: k s <smith[REDACTED].com>
Sent: Wednesday, May 19, 2021 2:18 PM
To: Enjoli Fletcher <Enjoli_Fletc[REDACTED]>
Cc: Kathryn Chapman <K[REDACTED]@arts.gov>
Subject: Pre-Trial Status Hearing 5/26/21 CASE #: 1:21-cr-00128-1 KEVIN SMITH

CAUTION - EXTERNAL:

Good afternoon Enjoli Fletcher,

I would like to inform you that from the time the indictment was filed, I have never received any notices via email or mail. I have complied with all of the requirements from pre-trial services and my correct email, mailing address, and phone number is on file with them.

As of 1:30PM, Wednesday, May 19, 2021, I have not received any written confirmation of the time, date, and call-in number for the status hearing via video conference on Wednesday May 26, 2021 at 3:30PM.

As I stated in the court proceeding on May 18, 2021, my teenage daughters have been dealing with flu like symptoms that include a fever [REDACTED]

[REDACTED] Th [REDACTED]
[REDACTED] and everyone including the teenage daughters has utilized remote services as much as possible in various areas of life to avoid exposing anyone vulnerable within the home to any sicknesses or illnesses originated outside of the household.

I will comply with the order of the Court and the Honorable Judge John F. Kness, but the sooner that I can get the video conference instructions and date/time confirmation will help tremendously as I will need to accommodate my daughters' usage of the computers because they take their classes online and we have limited access to computers in the household. It would ultimately be my preference to continue via telephone conferences because if there was a last-minute time change or anything similar to the adjustment made before the last hearing it may cause one of my children to miss a class or a session with a tutor.

I thank you in advance for taking the time to review and address these concerns and I look forward to your prompt response.

Respectfully,
Kevin Smith

Re: PROPOSED - Jury Trial Dates - 21-cr-00128-1 USA v. Smith

k s <smith[REDACTED].com>
Tue 11/23/2021 5:46 PM
To:

- Heinze, Stephen (USAILN) <Stephe[REDACTED]@gov>;
- Enjoli Fletcher <Enjol[REDACTED]@gov>

EXHIBIT A

Good Evening,

I just read this message which was received at 4:55 P.M. The government did not spell out any conflicts with the dates that I proposed in my email, nor did he respond to the legitimate concerns and questions that I posed. I specifically stated the reasons why I submitted the dates that I proposed. If the government has any conflicts with the dates that I proposed, then it is my understanding that the reasons should have been stated in his response.

Thank you.

From: Heinze, Stephen (USAILN) <Stephen[REDACTED]@gov>
Sent: Tuesday, November 23, 2021 4:25 PM
To: Enjoli Fletcher <Enjoli[REDACTED]@gov>
Cc: k s <smith[REDACTED]@com>
Subject: RE: PROPOSED - Jury Trial Dates - 21-cr-00128-1 USA v. Smith

Enjoli:

I trust you have seen the email below, which Mr. Smith sent to both you and me yesterday – as well as the November 19 email from me to Mr. Smith below that.

To summarize the parties' responses to the Court's request for proposed trial dates, (as I told Mr. Smith in my email below) the government's best estimate at this time is that it will take one day to select a jury and for the parties to give their opening statements, five days for the government to present its case-in-chief, and half a day for the parties to make their closing arguments. Mr. Smith has not provided an estimate as to how long any defense case will take to present. Thus, I respectfully suggest that the Court allow approximately seven to ten days for the trial in this case.

Without providing any details (including specific dates) regarding conflicts, Mr. Smith has asserted that he needs a minimum of 18 months to prepare a defense in his case. In light of the Court's current schedule, the government proposes the following starting dates for this trial: Monday, January 24, 2022; Monday, April 11, 2022; and Tuesday, May 31, 2022. (The third suggested starting date is the day after Memorial Day.)

Thank you very much for your consideration.

Steve Heinze
AUSA

EXHIBIT A

From: k s <smit[REDACTED]@com>
Sent: Monday, November 22, 2021 10:37 AM
To: Heinze, Stephen (USAILN) <SHeinz[REDACTED]@.gov>
Cc: Enjoli Fletcher <Enjoli[REDACTED]@.gov>
Subject: [EXTERNAL] Re: PROPOSED - Jury Trial Dates - 21-cr-00128-1 USA v. Smith

Good Morning,

Please read the responses to your email below.

As directed by the Court, I am contacting you to inquire about the time needed for your trial in the above-captioned case and about your availability and any schedule conflicts you may have. You have likely seen in the email below that the Court is currently unavailable for jury trials in the remaining part of 2021; other periods in which the Court is not available in 2022 are also listed.

As directed by the Court, I am responding to your email. I am copying the Courtroom Deputy on this email. I am not including Ms. Blaine because she is not my attorney, and she should never have been copied in any communication with me allowing her to have access to my personal email address. If the parties from the case deemed it was necessary to inform Ms. Blaine about any developments regarding this case, the communication should have been on a separate email between the Court and/or the prosecution and Ms. Blaine. I do not have to communicate with her. On several occasions my personal email address has been made available to her and is another violation of the Privacy Act. Also, there is a motion (Dkt. 48) that has not been fully addressed. The Judge said that he wasn't prepared to rule on the motion, but it was unlikely that the Court would dismiss the case. I am wondering, if the Court hasn't had time to come to a final determination, how the Court could possibly try to set a trial date at this point. This is eerily similar to how the Court failed to rule on a motion at docket 17 asking for discovery and challenging jurisdiction but spent months on the "question of if I wanted to represent myself in court". There was no question, it was clearly on record that I wanted to proceed pro se. Regarding the motion filed on September 28, 2021 at docket 48, it's clear that the government did not provide any of the items requested that would prove that the government acted in accordance with Rule 5 and Rule 9 of the Fed.R.Crim.P. nor did they provide any circumstance or exception that allowed the Government to forsake my rights. With that being said, I have two very important health procedures that have to be taken care of and some very important issues that I will have to deal with regarding my children's education that are out of town. There were no dates suggested by the Government for the trial, so my suggestions are any dates after December 26th, 2022, preferably June of 2023.

EXHIBIT A

For purposes of planning, I can tell you that the government's best estimate at this time is that it will take one day to select a jury and for the parties to give their opening statements, five days for the government to present its case-in-chief, and half a day for the parties to make their closing arguments. Please advise if you anticipate that the selection of the jury, the opening statements, and/or the closing arguments will take more or less time than I have estimated.

For the purpose of trying to get a better understanding and to clear up any misconceptions, can you please explain how the Government came up with it's best estimate of one day to select a jury? The following list outlines potential problems with the jury selection:

- Challenges to the Venire
- Challenges for Cause
- Actual Bias
- Implied Bias
- Peremptory Challenges

Striking the Jury

How could the government possibly know if any of these issues with the jury will arise? Does the Government actually believe that these issues can be resolved in one day?

Also, regarding the Government presenting its case-in-chief, can you please explain how you came up with that estimate of time? There have not been any challenges to the evidence. I have not had an opportunity to gather all of the potential witnesses that attended the alleged seminars, nor have I had a chance to depose the dozens of witnesses.

Also, please advise as to how long you anticipate any defense case will take, so that we can provide the Court with an estimate of the total time needed for the trial.

As of yet, the Court has not directed the Government to release sealed documents that are vital to my defense. I have not had a chance to locate and depose witnesses and there are other important issues that have not been resolved. Because of the uncertainty of reasons listed above and due to the fact that the Court seems to require a response, I will say that I need a minimum of 18 months to prepare an adequate defense. Whether that is granted or not is up to the Court, but considering the circumstances, at a minimum, this is what I will need.

EXHIBIT A

EXHIBIT A

And please advise me of any conflicts in your schedule in the coming months.

See the first paragraph of my response. While protecting my HIPPA rights, it outlines the potential conflicts in my schedule in the coming months. Based upon the Court's directive, I believe I am following what was asked of me. If there are any conflicts in the time frame I suggested, which is spelled out concisely, then the Government should respond to this email.

Thank you and have a Happy Thanksgiving.

From: Heinze, Stephen (USAILN) <Stephe[REDACTED]@usailn.gov>
Sent: Friday, November 19, 2021 1:30 PM
To: k s <smith[REDACTED]@usailn.gov>
Cc: h[REDACTED]@usailn.gov <h[REDACTED]@usailn.gov>
Subject: RE: PROPOSED - Jury Trial Dates - 21-cr-00128-1 USA v. Smith

Mr. Smith:

As directed by the Court, I am contacting you to inquire about the time needed for your trial in the above-captioned case and about your availability and any schedule conflicts you may have. You have likely seen in the email below that the Court is currently unavailable for jury trials in the remaining part of 2021; other periods in which the Court is not available in 2022 are also listed.

For purposes of planning, I can tell you that the government's best estimate at this time is that it will take one day to select a jury and for the parties to give their opening statements, five days for the government to present its case-in-chief, and half a day for the parties to make their closing arguments. Please advise if you anticipate that the selection of the jury, the opening statements, and/or the closing arguments will take more or less time than I have estimated.

Also, please advise as to how long you anticipate any defense case will take, so that we can provide the Court with an estimate of the total time needed for the trial. And please advise me of any conflicts in your schedule in the coming months.

Thank you very much.

Stephen Heinze
Assistant U.S. Attorney
Northern District of Illinois

EXHIBIT A

From: Enjoli Fletcher <Enjoli [REDACTED]@us.gov>
Sent: Thursday, November 18, 2021 12:15 PM
To: hnb_blaine [REDACTED] <hnb[REDACTED]@com>; Heinze, Stephen (USAILN) <SHein [REDACTED]@com>; k s <smith [REDACTED]@com>
Subject: PROPOSED - Jury Trial Dates - 21-cr-00128-1 USA v. Smith

Good afternoon,

The Court is prepared to schedule a trial date for this case. The parties shall meet and confer regarding their availability for trial. Please confirm the **number of days and/or weeks needed for trial, including jury selection**. Please send me **one** joint email with at least **three proposed trial dates and any conflict dates**. Please **respond to this email** by close of business, **Tuesday, 11/23/2021**. If the parties do not respond to this email by the deadline, a trial date will be selected by the Court.

***Please note:**

Currently, the Court is unavailable for jury trials during the year 2021.

November 24 – November 26
December 23 – December 24
December 31

Currently, the Court is unavailable for jury trials during the following times in the year 2022:

February 15 – February 28
March 7 - March 11
March 21 - March 25
April 4 – April 8
May 2 – May 20
June 13 – June 17
July 18 – July 29
August 22 – August 26
October 11 – October 28
November 30 -December 21

-Enjoli

Enjoli Fletcher
Courtroom Deputy to the Hon. John F. Kness
U.S. District Court for the Northern District of Illinois
219 S. Dearborn Street
Chicago, IL 60604
[REDACTED]

EXHIBIT B

Josh Adams <josh[REDACTED]law.com>

To: Smith[REDACTED]yahoo.com

Mon, Jun 7, 2021 at 6:02 PM

Mr. Smith,

This is Joshua Adams, the lawyer that was on your court call the other week before Judge Kness.

I just left you a voice mail and was hoping to talk prior to your next hearing on 6/9 at 11:15. It appeared as if you had some questions and I wanted to see if I could answer them prior to the hearing.

Please call me at your convenience.

Joshua Adams

847-[REDACTED]

fed case

Josh Adams <Josh@[REDACTED]law.com>

Wed 6/9/2021 10:52 AM

To:

- smith[REDACTED]mail.com <smith[REDACTED]hotmail.com>

Mr. Smith,

I called you a couple days ago, please give me a call prior to the hearing at 1115 today. my cell is 847-[REDACTED]

Thanks

Joshua Adams

EXHIBIT B

From: Josh Adams
Sent: Tuesday, June 15, 2021 4:10 PM
To: smith [REDACTED] mail.com
Subject: USA v. Kevin Smith

Mr. Smith,

Please call me prior to the next court date so we can discuss your case. I can answer the questions you have and have been asking the court.

My cell is 847-[REDACTED]

Thanks,
josh

FW: USA v. Kevin Smith

Josh Adams <Josh [REDACTED] law.com>
Thu 6/24/2021 10:49 AM
To:

- smith [REDACTED] mail.com <smith [REDACTED] mail.com>

Mr. Smith,

Can you please acknowledge receipt of these emails, I want to know I at least have your correct address. If you do not want to discuss your case with me that is fine, but I would appreciate the courtesy of a reply.

I have to file my brief regarding the court's requirement to place you under oath.
Do you want a copy of the government's brief?

Again, please respond to this email either way. If you don't that is fine, if you do, I am happy to speak with you.

Josh
847-[REDACTED]

EXHIBIT B

Court appearance

Josh Adams <Josh[REDACTED]elaw.com>

Thu 7/22/2021 4:39 PM

To:

- smith[REDACTED]ail.com <smit[REDACTED]mail.com>

Are you receiving my emails? Please kindly let me know. If you wish not to discuss the case that is fine I would like to know if you are at least receiving them.

Thanks

Joshua Adams

Re: Telephone Hearing with Judge Kness 21-cv-00128 USA v. Smith

Holly Blaine <hnb[REDACTED].com>

Thu 10/14/2021 10:42 AM

To:

- Enjoli Fletcher <Enjoli[REDACTED].gov>

Cc:

- stephen[REDACTED].gov <Stephen[REDACTED].gov>;
- k s <smit[REDACTED]otmail.com>

Good morning Enjoli,

Can you put Mr. Smith and me on a breakout call after the status hearing today so that I can give him my contact information?

Thank you,
Holly Blaine

Note: Some information within Exhibits A and B have been redacted to maintain privacy.